

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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|--------------------------------|---|----------------------|
| In the Matter of |) | |
| |) | |
| Amendment of Section 73.202(b) |) | MB Docket No. 10-189 |
| Table of Allotments, |) | RM-11611 |
| FM Broadcast Stations. |) | |
| (Willow Creek, California) |) | |

**REPORT AND ORDER
(Proceeding Terminated)**

Adopted: February 16, 2011

Released: February 18, 2011

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it a *Notice of Proposed Rule Making* (the “Notice”)¹ issued at the request of Miriam Media, Inc. (“Petitioner”), the auction winner for FM Channel 253A, Willow Creek, California.² Petitioner has filed a Form 301 Application (with the requisite fee) for a construction permit, seeking a minor change in its winning bid by modifying the allotment from Channel 253A, Willow Creek, California, to Channel 254C1, Loleta, California.³ The Notice proposes the allotment of Channel 258A at Willow Creek, California, in order to maintain a first local service at Willow Creek. Petitioner also submitted a Form 301 (with the requisite fee), seeking authority to construct FM Channel 258A at Willow Creek.⁴

2. Petitioner submitted comments in support of its proposal to allot Channel 258A at Willow Creek, California. No other comments were received. In its comments, petitioner reiterates its earlier contention in the petition for rule making that the allotment of Channel 258A at Willow Creek, would serve the public interest, despite an inability to provide a 70 dBu city-grade signal contour to the entire community of Willow Creek, as a defined Census Designated Place (“CDP”).

3. The Commission’s rules generally require that a new allotment proposal must provide a 70 dBu city-grade signal contour to the entire proposed community, in accordance with Section 73.315(a) of the Rules.⁵ Petitioner emphasizes, however, that the proposed allotment of Channel 258A at Willow Creek would provide a 70 dBu city-grade signal contour covering the entire population of the CDP, as well as the entire principal community of Willow Creek as defined by Humboldt County and the Willow Creek Community Services District. We agree with petitioner that the facts of this case are similar to

¹ *Willow Creek, California*, Notice of Proposed Rule Making, 25 FCC Red 13395 (MB 2010).

² See File No. BSFH-20061218ADR.

³ File No. BNPH-20070406ABY.

⁴ File No. BNPH-20091015ABJ.

⁵ 47 CFR § 73.315(a).

those presented in *Beatty and Goldfield, Nevada*,⁶ wherein we granted a proposal that would not provide a 70 dBu city-grade signal contour to the entire CDP, but would fully encompass the town site, providing service to 100 percent of the population of the CDP. We therefore find petitioner's reasoning persuasive; moreover, we have determined that a licensee using the original allotment of Channel 253A at Willow Creek, at the specified reference coordinates for that allotment, also would be unable to provide a 70 dBu city-grade signal contour encompassing the entire CDP.⁷ Accordingly, as in *Beatty*, we find that petitioner has demonstrated substantial compliance with Section 73.315(a) of the Rules, with respect to the allotment of FM Channel 258A at Willow Creek, California.

4. We find that the allotment of Channel 258A at Willow Creek will promote the public interest. The allotment of Channel 258A at Willow Creek will preserve a first local service at that community, while allowing Petitioner to construct Channel 254C1 at Loleta, California, thereby providing a first local service at that community, as well. This arrangement of allotments will serve Priority Three of the Commission's allotment priorities.⁸ Because Petitioner is not yet providing service at Willow Creek, nor has Petitioner constructed facilities to provide such service, this "backfill" proposal is consistent with the policy articulated in *Pacific Broadcasting of Missouri LLC*.⁹ We therefore shall grant Petitioner's proposal to allot Channel 258A at Willow Creek, California, as well as Petitioner's application for a construction permit for FM Channel 254C1 at Loleta, California.

5. Accordingly, pursuant to the authority found in 47 U.S.C. Sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) and 47 C.F.R. Sections 0.61, 0.204(b) and 0.283, IT IS ORDERED That, effective April 4, 2011, the FM Table of Allotments, 47 C.F.R. Section 73.202(b), IS AMENDED, with respect to the community listed below, to read as follows:

| <u>Community</u> | <u>Channel</u> |
|--------------------------|----------------|
| Willow Creek, California | 258A |

The reference coordinates for FM Channel 258A at Willow Creek, California, are 40-57-29 NL and 123-42-23 WL, at a site 6.7 km (4.2 miles) west of the community.

6. IT IS FURTHER ORDERED, That the Form 301 application filed by Miriam Media, Inc., for FM Channel 254C1 at Loleta, California, File No. BNPH-20070406ABY, IS GRANTED.

⁶ *Beatty and Goldfield, Nevada*, Notice of Proposed Rule Making, 23 FCC Rcd 14851 (MB 2008), and Report and Order, 24 FCC Rcd 2225 (MB 2009)(together, "*Beatty*") (allotment approved, where 70 dBu city-grade signal contour would not cover entire census-designated boundary, but would encompass entire town site). See also cases cited in *Beatty*, Notice of Proposed Rule Making, 23 FCC Rcd 14851, n.5.

⁷ The reference coordinates of existing FM Channel 253A at Willow Creek, California, are 40-56-50 NL and 123-37-10. Our engineering analysis has confirmed that it would not be possible to provide a 70 dBu city-grade signal contour to the entire Census Designated Place of Willow Creek using Channel 253A at the specified coordinates.

⁸ The FM allotment priorities are: (1) First full-time aural service; (2) Second full-time aural service; (3) First local service; and (4) Other public interest matters. Co-equal weight is given to Priorities (2) and (3). See *Revision of FM Assignment Policies and Procedures*, Second Report and Order, 90 FCC 2d 88 (1982), *recon. denied*, Memorandum Opinion and Order, 56 RR 2d 448 (1983).

⁹ *Pacific Broadcasting of Missouri LLC*, (Letter Ref. No. 1800B3-LAS [M.Bur. Dec. 21, 2001]), *app. for rev. denied*, Memorandum Opinion and Order, 18 FCC Rcd 2291 (2003), *recon. denied*, Memorandum Opinion and Order, 19 FCC Rcd 10950 (2004).

7. IT IS FURTHER ORDERED, That the Secretary of the Commission shall send by Certified Mail, Return Receipt Requested, a copy of this Order to the following counsel of record for Petitioner:

Evan Carb, Esq.
Law Offices of Evan D. Carb, PLLC
1140 Nineteenth Street, N.W. – Suite 600
Washington, D.C. 20036
(Counsel for Miriam Media, Inc.)

8. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

9. The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801 (a)(1)(A).

10. A filing window period for Channel 258A for Willow Creek, California, will not be opened at this time. Instead, the issue of opening this allotment for auction will be addressed by the Commission in a subsequent *Order*.

11. For further information concerning this proceeding, contact Deborah A. Dupont, Media Bureau (202) 418-7072. Questions related to the application filing process for FM Channel 258A at Willow Creek, California, should be addressed to the Audio Division, Media Bureau, (202) 418-2700.

FEDERAL COMMUNICATIONS COMMISSION

Nazifa Sawez
Assistant Chief
Audio Division
Media Bureau